

101.77.1. UNILATERAL CHANGE ORDER.

A change order issued by the Resident Engineer in accordance with his/her determination of an equitable price and time adjustment, but to which the contractor does not agree and does not sign.

101.78. VALUE ENGINEERING.

Value Engineering is the formal technique by which contractors may voluntarily suggest methods for performing the contract requirements more economically and share in the resulting savings, without impairing essential functions or characteristics.

101.79. WORK.

The furnishing of all labor, materials, equipment, and other incidentals necessary to complete the work under the Contract.

SECTION 102 BIDDING REQUIREMENTS AND CONDITIONS

102.01. PRE-QUALIFICATION OF BIDDERS.

Pre-qualification shall be a prerequisite for bidding on all projects unless prohibited by law or waived by the Transportation Department.

Prequalification of bidders shall be accomplished in conformance with the most current issue of the Oklahoma Administrative Code, copies of which are available from the Office Engineer, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73105.

102.02. NOTICE TO CONTRACTORS.

After the date is set for the receipt of proposals, the Department will give notice of bid opening to prospective bidders. The notice will contain a description of the proposed work, together with information regarding access to Proposal forms, Plans and Specifications, and the amount of Proposal Guaranty. This notice to Contractors will also be published as an advertisement giving notice of the request for bids, as required by State Law. The notice to Contractors will become part of the Contract documents.

102.03. CONTENTS OF PROPOSAL FORMS.

The Proposal Form will state the location and description of the contemplated construction, show the estimate of the various item quantities and kinds of work to be performed or materials to be furnished. A schedule of items for which unit bid prices are invited will be included along with the specified time in which the work must be completed, amount of the Proposal guaranty, and the date, time and place of the opening of Proposals. The form will also include or designate any specifications or requirements that vary from, or are not contained in the Standard Specifications.

Papers bound with or attached to the Proposal Form are considered a part of the Proposal.

The plans, specifications, and other documents designated in the Proposal Form are considered a part of the Proposal whether attached or not.

The prospective bidder will be required to pay the Department the sum stated in the Advertisement for each copy of the Proposal Form and each set of plans obtained.

102.04. ISSUANCE OF PROPOSAL FORM.

The Department reserves the right to disqualify a bidder as non-responsible or refuse to issue a Proposal Form to a bidder for any of the following reasons:

- (a) Lack of competency and adequate machinery, plant, and other equipment, as revealed by the financial statement and experience questionnaire required under Subsection 102.01.
- (b) Uncompleted work under Contract that the Department determines might hinder or prevent the prompt completion of additional work if awarded.
- (c) Failure to pay, or satisfactorily settle, all bills due for labor and material on any Contract in force at the time of issuance of Proposals.
- (d) Failure to comply with any prequalification regulations.
- (e) Default under previous Contract(s).
- (f) Unsatisfactory performance on previous or current Contract(s).
- (g) Indictment during the pendency of such indictment, for or conviction of a felony involving moral turpitude or offences against the public contracting laws of the United States or any state of the United States which may in the determination of the Department adversely affect the ability of the contractor to perform future work. For the purpose of the subsection, entry of a plea of guilty or nolo contendere to any such offense shall be considered as equivalent to conviction.
- (h) The prospective bidder is debarred or ruled unacceptable by the Department, a Federal Agency or other Government Agencies.
- (i) Failure to comply with Disadvantaged Business Enterprise requirements in previous Contract(s).
- (j) Failure to pay subcontractor or release subcontractor retainage as required by Subsection 109.11 on previous or current Contract(s).

102.05. INTERPRETATION OF QUANTITIES & BID PROPOSAL.

The quantities appearing in the bid Proposal are estimates used for the comparison of Proposals. Payment will be made for the actual quantities of work performed and accepted or materials furnished in accordance with the Contract. The estimated quantities of work to be done and materials to be furnished may be increased, decreased, or eliminated in their entirety.

102.06. EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS AND THE WORK SITE.

The bidder shall examine the site of the proposed work, the Proposal, Plans, Specifications, Supplemental Specifications, Special Provisions, and Contract forms before submitting a Proposal. If no site investigation is performed, the bidder is responsible for all site conditions that should have

been discovered had a reasonable site investigation been performed. The submission of a Proposal will be considered conclusive evidence that the bidder is satisfied with the conditions to be encountered in performing the work and as to the requirements of the proposed Contract.

Boring logs and other records of subsurface investigations are available for inspection by bidders. They are made available to bidders so all have access to identical subsurface information available to the Department, and are not intended as a substitute for personal investigation, interpretations, and judgment of the bidders. Boring and subsurface investigations performed by or on behalf of the Department are conducted to determine design criteria. Bidders should not rely on Department data to assess the difficulty of the required work, or actual conditions which may be encountered.

Boring logs and other subsurface investigation records are available for inspection at Department of Transportation, Office Engineer, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73105, during normal business hours.

The Department will not be bound by any statement or representation concerning conditions or description of the work unless they are included in the Proposal Form, Plans, Specifications, Supplemental Specifications, Special Provisions, or related Contract documents. Oral explanations or instructions given before the award of the Contract by Department employees or agents will not be binding.

Any request for explanation of the meaning or interpretation of the Proposal Form, Plans, Specifications, Supplemental Specifications, Special Provisions, or related Contract documents shall be submitted in adequate time to allow a reply to reach all bidders before submission of their bid Proposal. Interpretations or explanations made by the Department in response to such requests will be issued as an addendum to the proposal form, and will be furnished to all plan holders by certified letter, telegram, or facsimile before the time set for opening of Proposals. Bidders shall acknowledge receipt of addenda on the Proposal form in the space provided.

102.07. PREPARATION OF PROPOSAL.

The bidder shall submit his/her Proposal upon forms and/or electronic media furnished by the Department. The bidder shall specify a unit price in figures for each pay item for which a quantity is given, and shall show the product of the respective unit prices and quantities written in figures in the column provided for that purpose, and shall show the total amount of the Proposal by adding the amounts of the several items. All the figures shall be in ink or typed. In case of a discrepancy between the unit price and the product of the unit price, the unit price shall govern.

Any change in the unit price, the product of the unit price, or the total amount of the Proposal shall be acknowledged by the initials of the person signing the bid adjacent to each such change or alteration.

The Proposal must be signed in black or blue ink by the individual, by all members of the partnership, by a duly authorized officer of a corporation, or by all members of the joint venture. If by corporation, the name of the corporation and its business address must be shown.

102.08. IRREGULAR PROPOSALS.

Proposals will be considered irregular and may be rejected as non-responsive if:

- (a) The Proposal is on a form (or format if computer generated) other than that approved by the Department, or if the form is altered or incomplete.
- (b) There are unauthorized additions, conditional or alternate bids, or irregularities of any kind that may tend to make the Proposal incomplete, indefinite, or ambiguous.
- (c) The bidder adds provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award. This does not exclude a proposal limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, provided that selection of awards is made by the Department.
- (d) The Proposal does not contain a unit price for each pay item listed except in the case of authorized alternate pay items.
- (e) Any of the unit bid prices are significantly unbalanced to the potential detriment of the Department.
- (f) The Proposal is not properly signed.
- (g) The Proposal is not typed or completed in ink.
- (h) The Contractor fails to provide a properly executed Proposal Guaranty.
- (i) The bidder fails to sign the non-collusive bidding certification.
- (j) The Proposal fails to comply with any other material requirement of the invitation for bids.
- (k) The bidder fails to properly comply with Disadvantaged Business Enterprise Requirements or to properly list eligible disadvantaged businesses when such participation is required.

102.09. PROPOSAL GUARANTY.

Each separate Proposal shall be accompanied by a Proposal Guaranty as defined in Subsection 101.10. in an amount equal to or greater than 5 percent of the Contractors bid, and made payable to, or subject to forfeiture to the Department.

102.10. DELIVERY OF PROPOSAL.

Proposals shall be:

- (a) Placed in a sealed envelope plainly marked with identifying information as required; and
- (b) Addressed to the Department in care of the official in whose office the Proposals are to be received; and
- (c) Filed before the time and at the place specified in the Advertisement. Proposals received after the specified time will be returned to the bidder unopened. The title and address of the official designated to receive bid Proposals is Office Engineer, 200 Northeast 21st Street, Oklahoma City, Oklahoma 73105.
- (d) Proposals may be delivered electronically as provided for in current Department procedures, if authorized.

102.11. WITHDRAWAL OF PROPOSALS.

Any bidder upon his/her, or his/her authorized representative's notarized written request, may withdraw his/her Proposal not later than the time set for opening thereof. At the time of reading Proposals, if a request to withdraw a Proposal has been received, when such proposal is reached, it will be returned to the bidder unread.

102.12. COMBINATION BIDS.

If the Department so elects, Proposals may be issued for Projects in combination and/or separately so that bids may be submitted either on the combination or on separate Projects of the combination.

The Department reserves the right to recommend awards on combination bids or separate bids to the best advantage of the Department. No combination of bids, other than those specifically authorized by the Department in the Proposals, will be considered.

102.13. PUBLIC OPENING OF PROPOSALS.

Proposals will be publicly opened and read on the date and at the hour and place set forth in the advertisement and Notice to Contractors in the presence of the Director or his/her duly authorized representative.

102.14. REJECTION OF BIDS.

Any of the following reasons may be considered just cause for the rejection of a bid or bids.

- (a) More than one Proposal for the same work from an individual, firm, partnership, joint venture or corporation whether under the same or different names.
- (b) The prospective bidder is debarred or ruled unacceptable by the Department, a Federal Agency or other Governmental Agency.
- (c) Submission of irregular Proposal as set forth in Sec. 102.08.
- (d) Lack of competency and/or inadequate equipment, as revealed by the financial statement and experience questionnaires required under Subsection 102.01.
- (e) Unsatisfactory performance on previous work.
- (f) Uncompleted work which, in the judgment of the Department, might hinder or prevent the prompt completion of additional work if awarded.
- (g) Default under previous Contract(s).
- (h) Errors in preparation of the Proposal.
- (i) Failure to settle bills for labor or materials on past or current contracts.
- (j) Failure to meet Disadvantage Business Enterprise goal or provide a good faith effort.

102.15. MATERIALS GUARANTY.

The successful bidder shall furnish a complete statement of the origin, composition, and manufacture of materials used in the construction of the work, together with samples to be tested for conformance with the Contract provisions.

102.16. NON-COLLUSIVE BIDDING CERTIFICATION.

Every Proposal submitted to the Department shall contain the following statement subscribed or affirmed by the bidder as true under the penalties of Law. This Certification, on Department forms, shall be signed by the bidders, notarized and submitted with the bid documents. Non-Collusive Bidding Certification will be notarized and substantially in the following form:

Non-Collusive Bidding Certification

By submission of this bid Proposal, each bidder and each person signing on behalf of any bidder, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief.

1. The prices in this bid Proposal have been arrived at independently without collusion, consultation, communication, or agreement with any other bidder or with any competitor for the purpose of restricting competition.
2. Unless required by law, the prices that have been quoted in this bid Proposal have not been knowingly disclosed and will not knowingly be disclosed by the bidder, directly or indirectly, to any other bidder or competitor prior to opening of Proposals.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a Proposal for the purpose of restricting competition.
4. The signers of this Proposal hereby tender to the Department this sworn statement that the named Contractor(s) has not, whether directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action to restrain free competitive bidding in connection with this Proposal.

(Signature)

(Print Name)

(Position in Company)

Subscribed and sworn before me this ____ day of _____ 19____ (20____).

My commission expires the ____ day of _____ 19 ____ (20 ____).

(seal)

(Notary Public)

A bid Proposal will not be considered for award nor will any award be made where there has not been compliance with the statements in the certification above.

The fact a bidder (1) has published price lists, rates, or tariffs covering items being procured, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such item, or (3) has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning of part 1 of the certification above.

SECTION 103 AWARD AND EXECUTION OF CONTRACT

103.01. CONSIDERATION OF PROPOSALS.

Following the public opening and reading of the Proposals, the Department will check and verify the product (extended amount) for each bid item and the Proposal amount for each Proposal received. The product (extended amount) for each bid item is then compared to the Department's estimate for each Proposal submitted. The Proposal amount for each acceptable Proposal submitted will then be compared and the results made public. The Commission reserves the right to reject any or all Proposals, waive an administrative error in the award process that would void an otherwise valid award, to advertise for new Proposals, or proceed to do the work otherwise when the best interest of the State will be promoted thereby.

103.02. AWARD OF CONTRACT.

Award of the Contract will be made by the Commission, upon the recommendation of the Director, to the lowest responsible bidder submitting a responsive bid and meeting the requirements of the Commission. The award, if made, will be within the time allowed by law after the opening of Proposals.

103.03. CANCELLATION OF AWARD.

The Commission reserves the right to cancel the award of any Contract at any time before the execution of said Contract without liability against the Commission or the Department.

In Projects which are proposed to be funded in whole or in part by Federal Funds, it is expressly agreed and understood that the receipt of such funds is essential to the Contract and the receipt of such funds requires the concurrence of the funding Federal Agency. If the funding Federal Agency neglects, fails, or refuses to concur in the award of the Contract, the Commission reserves the right to unilaterally rescind the award of the Contract despite the full and complete execution of the Contract by all parties.

In the event the Commission elects to exercise its right of unilateral rescission, the Contract's Proposal Guaranty shall be returned to the Contractor and both parties shall thereafter be released from any and all obligations and liabilities which otherwise would exist by reason of the Contract.